

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v. // CRIMINAL ACTION NO. 1:09CR61
CIVIL ACTION NO. 1:11CV77
(Judge Keeley)

JAMES RAMAGE,

Defendant.

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
[CRIM. DKT. NO. 99, CIV. DKT. NO. 2], AND DENYING WITHOUT
PREJUDICE PETITIONER'S § 2255 PETITION AS PREMATURE
[CRIM. DKT. NO. 96, CIV. DKT. NO. 1]

On May 19, 2011, the Honorable David J. Joel, United States Magistrate Judge ("Magistrate Judge Joel"), issued a Report and Recommendation ("R&R") recommending that the Court deny without prejudice the petition for a writ of habeas corpus filed by the pro se petitioner, James Ramage ("Ramage"), because his pending petition for a writ of certiorari before the Supreme Court of the United States on direct appeal rendered his habeas petition premature. The R&R also specifically warned Ramage that his failure to object to the R&R within fourteen days of receipt of it would result in the waiver of any appellate rights on these issues.¹

¹ The failure to object to the R&R not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See

To date, although the Supreme Court of the United States has since denied Ramage's petition for a writ of certiorari (crim. dkt. no. 105), Ramage has failed to object to Magistrate Judge Joel's R&R. Accordingly, the Court **ADOPTS** the R&R in its entirety (crim. dkt. no. 96, civ. dkt. no. 1), and **DENIES** Ramage's § 2255 petition **WITHOUT PREJUDICE** (crim. dkt. no. 96, civ. dkt. no. 1). To seek relief under § 2255, Ramage must re-file a habeas petition.

It is so **ORDERED**.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability as Ramage has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong) (citing Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

Thomas v. Arn, 474 U.S. 140, 148-53 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-00 (4th Cir. 1997).

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
[CRIM. DKT. NO. 99, CIV. DKT. NO. 2], AND DENYING WITHOUT
PREJUDICE PETITIONER'S § 2255 PETITION AS PREMATURE
[CRIM. DKT. NO. 96, CIV. DKT. NO. 1]

The Court directs the Clerk to transmit a copy of this Order to counsel of record, and all appropriate agencies, and to mail a copy to the defendant, James Ramage, via certified mail, return receipt requested.

DATED: June 27, 2011.

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE